THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 960 of 2001
Old F.A.F.O. 59 of 1984

U.P. State Mineral Development Corporation Limited, through its Secretary at 4, Way Road, Lucknow.

…. **Appellant.**

Versus

M/s Govind Singh & Company, through Govind Singh (the Contractor) C/O Sri Bharat Singh Punjab Lime Store Company, Gandhi Road, Dehradun.

.. **Respondent.**

Sri Nand Prasad, learned Standing Counsel for the appellant-State.
None of the respondents despite sufficient service.

Date June 14, 2006.
(Hon'ble B.S. Verma, J.)

This appeal has been preferred against the judgment and order dated 27.3.1984, passed by the Civil Judge II, Dehradun In Misc. Case No. 82 of 1983, whereby the learned Civil Judge rejected the objections filed against the award of the Arbitrator and made the same Rule of the Court.

Relevant facts are that the appellant ***(for short U.P.S.M.D.C.)*** gave certain contract to M/s Govind Singh and Company and when some disputes arose between the parties, the matter was referred to Sri B.B. Pandey, arbitrator for arbitral proceedings and award. Ultimately, the award of the Arbitrator was published on 29-5-1983, which was filed in the Court of the Civil Judge and registered as Original Suit No. 374 of 1983. Aggrieved by the award, the appellant preferred objections before the Court below challenging the award on the ground that the arbitrator was never appointed and the contractor had no right to appoint arbitrator. It was also alleged that there was no dispute between the parties and full and final payment was already made to the contractor. The

award has also been challenged on the ground that the arbitrator had misconducted himself and the proceedings.

The contractor denied the allegations made by the U.P.S.M.D.C. and asserted that there was an arbitration agreement between the parties and when disputes arose between the parties, the contractor nominated Sri B.B.Pande as his nominee and gave notice to the opposite party to nominate its arbitrator, but the appellant failed to nominate their arbitrator within the stipulated time, therefore, the arbitrator nominated by the applicant-contractor prceeded with arbitral proceedings and after recording the evidence led by the contractor, the award was published.

The learned Civil Judge framed necessary issues in the case, heard both the parties and ultimately on the basis of the material before the court, it was concluded that the Arbitrator was competent to proceed with the dispute and there was no collusion between the arbitrator and the contractor. It was also held that the arbitrator has not misconducted himself or the proceedings. It was concluded that the contractor nominated his nominee as arbitrator and asked the appellant to nominate their arbitrator, but the appellant failed to nominate any one. It was also concluded that no illegality was found in the matter and the appointment of Sri B.B.Pandey as sole arbitrator and the reference of dispute to him was fully justified. Accordingly, the objections filed by the appellants were rejected. It was held that the Arbitrator has neither misconducted himself nor the proceedings. The award made by the sole arbitrator was valid and accordingly, the award passed by the Arbitrator was made rule of the Court.

The U.P.S.M.D.C. has come up in appeal on the ground that the order of the court below is erroneous and not legally maintainable.

I have heard learned Standing Counsel for the appellant and perused the material on record.

As mentioned above, the contractor was given certain contract under the contract bond executed between the appellant and the respondent. During the course of execution of contract work, disputes arose between the contractor and the appellant. Under the contract agreement, it was open to both the sides to appoint/nominate its arbitrator. In the present case, the appellant despite notice received from the contractor did not choose to nominate its nominee to act as arbitrator and even did not participate in the arbitral proceedings. The learned Civil Judge has dealt with the arbitration agreement clause in the impugned order. I have gone through the entire impugned order of the Civil Judge. The learned Judge had given categorical finding that it has not been established that the arbitrator had mis-conducted himself or the proceedings. The record reveals that the nomination of the arbitrator was legal and in accordance with the agreement between the parties.

The learned Standing Counsel could not point out a single instance so as to infer that the Arbitrator had mis-conducted himself or the proceedings in the present case. It is not disputed that the appellant did not file its statement of claim before the Arbitrator, rather absented from participating in the arbitration proceedings. Such a conduct on the part of the appellant is self-speaking. The learned Civil Judge has already elaborately dealt with all relevant issues after framing necessary issues, which have been referred to above. There is no merit in the appeal, which is liable to be dismissed outright.

The appeal is devoid of merit and is hereby dismissed. The order under appeal is upheld. No order as to costs.

(B.S. Verma, J.)

RCP